

Exhibit F

1

Daogfhfc Conference

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2
3 FEDERAL HOUSING FINANCE
3 AGENCY,

4
4 Plaintiff,

5
5 v.

11-CV-6188 (DLC)
11-CV-6189 (DLC)
11-CV-6190 (DLC)
11-CV-6192 (DLC)
11-CV-6193 (DLC)
11-CV-6195 (DLC)
11-CV-6198 (DLC)
11-CV-6200 (DLC)
11-CV-6201 (DLC)
11-CV-6202 (DLC)
11-CV-6203 (DLC)
11-CV-6739 (DLC)
11-CV-7010 (DLC)

10
10
11 JPMORGAN CHASE & CO., et al.,

12
12
13 Defendants.

Conference

13
14 And other FHFA cases.

14 -----x

New York, N.Y.
October 24, 2013
3:30 p.m.

15
16
17 Before:

17
18 HON. DENISE COTE,

District Judge

19
20 APPEARANCES

20
21 QUINN EMANUEL URQUHART & SULLIVAN, LLP

21 Attorneys for Plaintiff

22 BY: MOLLY STEPHENS, ESQ.

22 SASCHA RAND, ESQ.

23
24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

Daogfhfc Conference

1 we just haven't gotten a commitment that they can do it by the
2 end of the year.

3 As we set forth in our letter, your Honor, we have
4 established why we need December 20 as the date. March 28 is
5 the cutoff, but we need to conduct depositions between in that
6 beginning time of 2014. So, the project files are necessary
7 for us to identify the deposition witnesses, notice up the
8 depositions, and complete them.

9 In addition, the schedules also require expert
10 reports, rebuttal reports to be submitted to defendant's
11 affirmative due diligence defenses beginning on February 17,
12 2014. And those project files which contain the actual due
13 diligence that was done for defendants will be necessary to
14 review, so we can actually respond to defendant's expert
15 reports.

16 THE COURT: Ms. Stephens, I have no doubt that all
17 parties in this litigation would like the files produced
18 promptly, and even December seems very late in the day for
19 production of these files.

20 But is the dispute about the date or who's going to
21 pay for the personnel that Clayton needs in order to make a
22 timely production?

23 MS. STEPHENS: I think both, your Honor. And Clayton
24 will not commit to a date. It says that it will in good faith
25 continue working towards responding to the subpoenas, but it

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

11

Daogfhfc Conference

1 cannot guarantee a date. And as you saw from the letter, it's
2 still viewing March as the final date for completion. And
3 there is a dispute that -- to actually insure completion by the
4 December 20 date, there might need to be hiring of additional
5 personnel. FHFA's position is that is an internal cost of
6 doing business for complying with a subpoena and that is not
7 something that should be passed onto FHFA.

8 As your Honor may recall, we did have a dispute with
9 the rating agencies, S&P, Moody's and Fitch, about this issue,
10 as well, back in May. And there was an issue about cost
11 reimbursement in May where your Honor noted that responding to
12 a subpoena is a cost of doing business, the internal cost of
13 doing business.

14 In this case, Clayton has over 600 employees. It's
15 using only one to pull project files. It has said to us that
16 even with this one, it should be able to finish its production
17 by the end of the year; although, as we know, the rate that
18 we've been quoted for pulling project files at 30 files per
19 week make us question that estimate. But we do want a
20 guarantee of a date. And to the extent that Clayton does need
21 to hire extra people to meet that date, we contend this is an
22 internal cost of responding to a subpoena.

23 As you know, as well, under the authority of In Re:
24 World Trade Center, there are three factors that the courts
25 look to in determining whether to shift costs; that is, the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

Daogfhfc Conference

1 nonparties' interest in the litigation, whether the nonparty
2 can bear the cost, and the public interest in the litigation.

3 As you know, the public interest of the litigation,
4 FHFA is pursuing this on behalf of taxpayers. In terms of the
5 cost, FHFA is pursuing this on behalf of taxpayers. Clayton,
6 on the other hand, is a private company that can bear its
7 internal costs of doing business. And finally, FHFA's position
8 is also that because Clayton was essentially an agent of these
9 defendants doing their due diligence work, the work that
10 defendants will rely on for their affirmative defense, that it
11 does have an interest in this litigation or at least should
12 have been aware that the documents it has are relevant to this
13 litigation.

14 THE COURT: Thank you, Ms. Stephens.

15 Mr. Rothenberg, can you describe physically the task
16 of producing this file, an individual file, due diligence file?

17 MR. ROTHENBERG: Yes, I'd be happy to. The due
18 diligence reports, which are the reports that were created for
19 each of Clayton's clients which includes the defendants in this
20 action, as well as Fannie Mae and Freddie Mac, those reports
21 are stored electronically on various servers at Clayton. Those
22 servers are located both in Connecticut and in Florida.

23 There is no one central repository for those
24 repository for those files. So, Clayton can't simply go to an
25 area on the server and just pull up, for example, the Deutsche

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

Daogfhfc Conference

1 Bank due diligence reports. They sit in different areas of
2 different servers. It's a manual process that requires someone
3 who is familiar with Clayton's network, as well as familiar
4 with due diligence itself to go into the various drives in the
5 servers to find those reports and to cull out the reports that
6 are actually the ones that went to the clients and to make sure
7 that there's no duplicates being produced and that these are
8 the actual reports being called for.

9 Because of the various naming conventions used within
10 Clayton, that is not something that you can just click on a
11 file and say, yes, that is the due diligence report that was
12 sent to Deutsche Bank in March 2007. You have to open up those
13 reports, look at them, and confirm that they are, indeed, the
14 reports for that particular project.

15 It's a very manually intensive, labor intensive
16 project that Clayton undertakes, both with regard to the FHFA
17 actions and with regard to the numerous other RBS actions
18 around the country.

19 When counsel refers to one person being involved in
20 this, that's inaccurate. There is one point person who goes in
21 and is familiar with the systems to pull these documents. Then
22 they go through multiple different people who perform the QC
23 function to insure that the documents being produced are the
24 ones being called for and that Clayton hasn't missed any
25 reports that are on its servers so that the production is

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

Daogfhfc Conference

1 complete and accurate when it's called for. That process takes
2 a while which is why Clayton cannot produce hundreds of these
3 in a week. In doing that, your Honor -- if I can address for a
4 few moments some of the points Ms. Stephens made.

5 THE COURT: Excuse me, Mr. Rothenberg. I don't think
6 we want to spend time at this point talking about the legal
7 standard. I'm just trying to get factual background here.

8 The FHFA letter talks about project files in its
9 Section A.

10 MS. STEPHENS: Yes.

11 THE COURT: Mr. Rothenberg, when you talk about
12 reports and have described to me the process of identifying the
13 responsive reports, are you talking about the same thing as is
14 described in the FHFA letter as project files?

15 MR. ROTHENBERG: Yes, your Honor. The parties have
16 requested what are known as the daily and final due diligence
17 reports. Those are the reports that Clayton provided to the
18 individual clients on a daily basis during the course of the
19 due diligence review, as well as at the end of the review,
20 those are the final reports. So, those are all of the reports
21 that Clayton provided to any of its clients for any of the
22 reviews at issue.

23 THE COURT: When you indicate, Mr. Rothenberg, that by
24 the end of November, all you will have left on your current
25 schedule is Nomura, Deutsche Bank, and MorganStanley.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300